



**Comptroller of the Currency
Administrator of National Banks**

Washington, D.C. 20219

**Corporate Decision #97-47
June 1997**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATIONS TO MERGE
BOATMEN'S BANK OF VANDALIA, VANDALIA, MISSOURI,
AND TWENTY-TWO OTHER AFFILIATED BANKS
WITH AND INTO
NATIONSBANK, NATIONAL ASSOCIATION, CHARLOTTE, NORTH CAROLINA**

June 6, 1997

I. INTRODUCTION

NationsBank Corporation recently acquired Boatmen's Bancshares, Inc., and its banking and nonbanking subsidiaries.¹ These merger applications are part of the process of combining the recently acquired affiliated banks into the holding company's lead bank.

On March 12, 1997, an application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to merge Boatmen's Bank of Vandalia, Vandalia, Missouri ("Vandalia") with and into NationsBank, National Association, Charlotte, North Carolina ("NationsBank") under the charter and title of the latter, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Vandalia Merger"). Vandalia is a Missouri state-chartered bank, and NationsBank is a national bank. NationsBank has its main office in Charlotte and operates branches in North Carolina, South Carolina, Georgia, Florida, Virginia, Maryland, and the District of Columbia.² Vandalia has its main office and one branch in Vandalia, Missouri.

¹ See *NationsBank Corporation: Order Approving the Merger of Bank Holding Companies*, 83 Fed. Res. Bull. 148 (December, 16, 1996). The acquisition was effective January 7, 1997.

² NationsBank's branches in South Carolina, Georgia, Florida, Virginia, Maryland, and the District of Columbia are the result of earlier transactions. See, e.g., Decision on the Application to Merge NationsBank, N.A. (South) with and into NationsBank, N.A. (OCC Corporate Decision No. 97-___, June 1, 1997).

On March 19, 1997, applications were filed with the OCC for approval to merge Boatmen's National Bank of Central Illinois, Hillsboro, Illinois, Boatmen's National Bank of Coles County, Charleston, Illinois, Boatmen's Bank of Franklin County, Benton, Illinois, Boatmen's Bank of Quincy, Quincy, Illinois, and Boatmen's Bank of South Central Illinois, Mt. Vernon, Illinois, with and into NationsBank under the charter and title of the latter, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Illinois Mergers"). Also on March 19, 1997, applications were filed for approval, after the Vandalia Merger has been consummated, to merge fifteen other banks whose main offices are in Missouri with and into NationsBank under the charter and title of the latter, under 12 U.S.C. §§ 215a & 1828(c) ("the Other Missouri Mergers").³

On April 30, 1997, an application was filed with the OCC for approval to merge Boatmen's National Bank of Oklahoma, Tulsa, Oklahoma, with and into NationsBank under the charter and title of the latter, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Oklahoma Merger"). Also on April 30, 1997, an application was filed for approval, after the Vandalia and Other Missouri Mergers have been consummated, to merge another Missouri bank, Boatmen's Bank of Southern Missouri, Springfield, Missouri, with and into NationsBank under the charter and title of the latter, under 12 U.S.C. §§ 215a & 1828(c) ("the Southern Missouri Merger").

In the merger applications, OCC approval is also requested for the resulting bank to retain NationsBank's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain NationsBank's branches and the other banks' main offices and branches, as branches after the mergers under 12 U.S.C. §§ 36(d) & 1831u(d)(1) (in the case of the interstate merger transactions) and under 12 U.S.C. § 36(b)(2) (in the case of the subsequent in-state mergers with the Missouri banks)

All the banks are direct or indirect subsidiaries of NationsBank Corporation, a multistate bank holding company headquartered in Charlotte, North Carolina. In the proposed mergers, a number of the holding company's recently acquired bank subsidiaries will be combined into its lead bank. For various business and operational reasons, the banks plan to consummate these mergers in a certain order over time: the Vandalia Merger on June 11, 1997, the Illinois Mergers and the Other Missouri Mergers on June 13, 1997, and the Oklahoma Merger and the Southern Missouri Merger on July 11, 1997.

II. LEGAL AUTHORITY

³ The fifteen other Missouri banks in the March 19th applications are: NationsBank, N.A. (Mid-West), Kansas City, Missouri (formerly Boatmen's National Bank; this bank also has branches in Kansas); The Boatmen's National Bank of St. Louis, St. Louis, Missouri (this bank also has branches in Illinois); Boatmen's National Bank of Cape Girardeau, Cape Girardeau, Missouri; Boatmen's National Bank of Lebanon, Lebanon, Missouri; Boatmen's National Bank of Boonville, Boonville, Missouri; Boatmen's First National Bank of West Plains, West Plains, Missouri; Boatmen's Bank of Kennett, Kennett, Missouri; Boatmen's Bank of Marshall, Marshall, Missouri; Boatmen's Bank of Mid-Missouri, Columbia, Missouri; Boatmen's Osage Bank, Butler, Missouri; Boatmen's Bank of Pulaski County, Richland, Missouri; Boatmen's River Valley Bank, Lexington, Missouri; Boatmen's Bank of Rolla, Rolla, Missouri; Boatmen's Bank of Southwest Missouri, Carthage, Missouri; and Boatmen's Bank of Troy, Troy, Missouri.

This series of transactions consists of a group of applications for interstate merger transactions for mergers of banks in Missouri, Illinois, and Oklahoma into NationsBank (the Vandalia Merger, the Illinois Mergers, and the Oklahoma Merger) and a group of applications for subsequent mergers of other banks in Missouri into NationsBank after NationsBank has branches in Missouri as a result of the Vandalia Merger (the Other Missouri Mergers and the Southern Missouri Merger). We review the legal authority for each group in turn under the statutes relevant to each group.

A. The Interstate Merger Transactions are Authorized, and the Resulting Bank may Retain the Offices of the Banks, under 12 U.S.C. §§ 215a-1, 1831u & 36(d) (the Riegle-Neal Act).

1. The interstate merger transactions are authorized.

In 1994, Congress enacted legislation to create a framework for interstate mergers and branching by banks. See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) ("the Riegle-Neal Act"). The Riegle-Neal Act added a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions beginning on June 1, 1997. See Riegle-Neal Act § 102(a) (adding new section 44, 12 U.S.C. § 1831u). It also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in such section 44 interstate merger transactions. See Riegle-Neal Act § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1). It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. See Riegle-Neal Act § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

Section 44 authorizes mergers between banks with different home states:

(1) In General. -- Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) [12 U.S.C. § 1828(c), the Bank Merger Act] between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

12 U.S.C. § 1831u(a)(1). The Act permits a state to elect to prohibit such interstate merger transactions involving a bank whose home state is the prohibiting state by enacting a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. See 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws).⁴ In the Vandalia Merger, the Illinois

⁴ For purposes of section 1831u, the following definitions apply: The term "home State" means, with respect to a national bank, "the State in which the main office of the bank is located." The term "host State" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." The term "interstate merger transaction" means any merger transaction approved pursuant to section 1831u(a)(1). The term "out-of-State bank" means, "with respect to any State, a bank whose home State is another State." The term "responsible agency" means the agency determined in accordance with 12 U.S.C. § 1828(c)(2) (namely, the OCC if the acquiring, assuming, or resulting bank is a national bank). See 12 U.S.C. § 1831u(f)(4), (5), (6), (8) & (10).

Mergers, and the Oklahoma Merger, the home states of the banks are Missouri, Illinois, Oklahoma, and North Carolina. None of these states has opted out. Accordingly, these merger applications may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

In addition, an application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b) of the Riegle-Neal Act. These conditions are: (1) compliance with state-imposed age limits, if any, subject to the Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills.

These merger applications satisfy all these conditions to the extent applicable. First, they satisfy the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. § 1831u(a)(5)(A). In the Vandalia Merger, NationsBank is acquiring a bank in the host state of Missouri. Missouri has not yet enacted legislation with respect to the interstate mergers and branching provisions of the Riegle-Neal Act, and so it presently does not have an age requirement for interstate mergers between banks. In the Illinois Mergers, NationsBank is acquiring five banks in the host state of Illinois.⁵ Illinois has enacted legislation with respect to the interstate mergers and branching provisions of the Riegle-Neal Act; but, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the Illinois statute currently contains no minimum time requirement for which the Illinois bank must have been in existence.⁶ In the Oklahoma Merger, NationsBank is acquiring a bank in the host state of Oklahoma. Oklahoma requires that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the Oklahoma bank must have been in existence for at least five years. See Okla. Stat. Ann. tit. 6, § 501.1(L). Boatmen's National Bank of Oklahoma (and its predecessors) has been in existence for more than five years. Accordingly, the Vandalia Merger, the Illinois Mergers, and the Oklahoma Merger satisfy the requirement of compliance with state age laws.

⁵ The mergers with the five Illinois banks are structured as five separate, but simultaneous, mergers of each bank into NationsBank. Thus, we treat each one of them as an interstate merger transaction under the Riegle-Neal Act.

⁶ The Illinois legislature passed a bill amending the state's interstate bank merger statute to introduce a five-year age requirement, but that legislation has not yet been enacted and therefore is inapplicable to the present transaction. See Senate Bill 690, Illinois 90th General Assembly. Moreover, each of the five Illinois banks here is more than five years old, and so the five-year age limit, if it were applicable, would be met. In addition, Missouri is also in the process of enacting legislation with respect to interstate mergers under the Riegle-Neal Act. However, that proposed legislation contains only provisions relating to the five-year age requirement in bank acquisitions by an out-of-state bank holding company and provisions permitting Missouri state-chartered banks to enter interstate bank mergers; it does not impose age or filing requirements on interstate bank mergers. See House Bill No. 257, Missouri 89th General Assembly (amending Mo. Rev. Stat. §§ 362.077 and 362.610).

Second, the proposals meet the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. See 12 U.S.C. § 1831u(b)(1).⁷ Missouri has no filing requirements for interstate merger transactions, since it has not yet enacted legislation implementing the Riegle-Neal Act. Similarly, the Illinois interstate bank merger statute does not any filing or notice requirement for an interstate merger transaction between two national banks or for a merger with a state bank when the resulting bank is a national bank.⁸ Finally, the Oklahoma interstate bank merger statute also does not appear to contain a filing requirement for an interstate merger transaction with an out-of-state resulting bank or any provision generally imposing a "qualifying to do business" filing requirement on out-of-state banks with branches in Oklahoma. As required by section 1831u(b)(1)(ii), NationsBank submitted a copy of the Vandalia Merger application to the Missouri Commissioner, copies of the applications for the Illinois Mergers to the Illinois Commissioner along with a letter notifying the Commissioner of the proposed mergers, and a copy of the Oklahoma Merger application to the Oklahoma Commissioner.⁹ Thus, the Vandalia

⁷ Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. However, where a state bank is involved, a state may continue to have authority to impose greater requirements on its own state-chartered banks, because of the reservation of authority in section 1831u(c)(3). Moreover, as a general matter, national banks are formed and incorporated under, and governed by, federal law. Their authority to enter mergers, to establish branches, or to undergo other changes in their corporate existence is determined by federal law, not state law; and any requisite approval is by the OCC, not state authorities. For a fuller discussion of this subject, see, e.g., Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (at pages 4-5, 12-14 & note 11).

⁸ The Illinois statute does contain provisions addressing application requirements for a merger with an Illinois state bank, but these provisions apply only when an out-of-state state bank is involved and not when the out-of-state resulting bank is a national bank. See 205 Ill. Comp. Stat. Ann. § 5/21.1 (application for certificate of authority in interstate mergers with a state bank and other requirements for an "out-of-state bank") & 205 Ill. Comp. Stat. Ann. § 5/20 (mergers with resulting national bank). See also 205 Ill. Comp. Stat. Ann. § 5/2 (definition of "out-of-state bank" includes only state-chartered institutions; definition of national bank after May 31, 1997, includes out-of-state national banks). In addition, in all mergers in which a state-chartered bank merges into a national bank, both Missouri and Illinois require the banks to notify the state banking commissioner prior to consummation of the merger and, in the case of Missouri, provide the commissioner with a copy of the OCC's certification of the merger. See 205 Ill. Comp. Stat. Ann. § 5/20; Mo. Rev. Stat. § 362.240(2). The applicants will comply with these provisions.

⁹ Although the later mergers are in-state mergers not subject to the Riegle-Neal Act and its filing requirements, NationsBank also provided a copy of the applications for the Other Missouri Mergers to the Missouri Commissioner and, because NationsBank, N.A. (Mid-West), Kansas City, Missouri, also has branches in Kansas, a copy of that application to the Kansas Commissioner. In addition, the filing requirements of section 1831u(b)(1) apply only with respect to the host states that will become host states as a result of the merger transaction under

Merger, the Illinois Mergers, and the Oklahoma Merger satisfy the requirement of compliance with state filing requirements.

Third, the proposed interstate merger transactions do not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act. Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on section 1831u(a) interstate merger transactions. However, interstate merger transactions involving only affiliated banks are specifically excepted from these provisions. See 12 U.S.C. § 1831u(b)(2)(E). NationsBank and all the merging banks are affiliates; thus section 1831u(b)(2) is not applicable to these mergers.

Fourth, the proposed interstate merger transactions also do not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant banks' record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks since it applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction." 12 U.S.C. § 1831u(b)(3). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994). In these applications, NationsBank (the bank submitting the application as the acquiring bank) has bank affiliates in Missouri, Illinois, and Oklahoma (*i.e.*, the merging banks), and is also not otherwise obtaining a branch or bank affiliate in any state in which it did not have a branch or bank affiliate before. Thus, this Riegle-Neal Act provision is not applicable to these merger applications. However, the Community Reinvestment Act itself is applicable, as discussed below, see Part III-B.

Fifth, the proposed mergers satisfy the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. See 12 U.S.C. § 1831u(b)(4). As of the date the applications were filed, all the banks satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each bank is at least satisfactorily managed. The OCC has also determined that, following the merger,

review in the application, not the host states in which the acquiring bank already operates branches. See Decision on the Application to Merge First Interstate Bank of Washington, N.A., into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-30, June 6, 1996) (page 7, note 9). Thus, for the Vandalia Merger, the Illinois Merger, and the Oklahoma Merger, NationsBank must comply with the filing requirements of section 1831u(b)(1) for Missouri, Illinois, and Oklahoma, not for North Carolina, South Carolina, Georgia, Florida, Virginia, Maryland, and the District of Columbia, the other jurisdictions in which it already operates branches.

NationsBank will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

Accordingly, the Vandalia Merger, the Illinois Mergers, and the Oklahoma Merger are permissible interstate merger transactions under section 1831u.

2. Following the merger, the resulting bank may retain all the participating banks' main offices and branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The applicants have requested that, upon the completion of the mergers, NationsBank (as the resulting bank in the mergers) be permitted to retain and continue to operate its existing main office in Charlotte as the main office of the resulting bank and to retain and continue to operate as branches (1) its own existing branches and (2) the main offices and branches of Vandalia in Missouri, the five Illinois banks in Illinois, and Boatmen's National Bank of Oklahoma in Oklahoma. In interstate merger transactions under section 1831u, the resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for:

(1) Continued Operations. -- A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

12 U.S.C. § 1831u(d)(1). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 U.S.C. § 1831u(f)(11). In addition, Congress also added a conforming amendment to the McFadden Act to emphasize that branch retention in an interstate merger transaction under section 1831u occurs under the authority of section 1831u(d):

(d) Branches Resulting From Interstate Merger Transactions. -- A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act.

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Therefore, NationsBank, the resulting bank in these interstate merger transactions, may retain and continue to operate all of the existing banking offices of all the participating banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).¹⁰

¹⁰ By its action in adding section 36(d), Congress made it clear that section 44(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 44 and that it operates independently of the provisions for branch retention in mergers under 12 U.S.C. § 36(b)(2). Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). Congress clearly was aware of the McFadden Act's existing provisions for branch retention in mergers at the time it acted on Section 44 and the way in which those provisions applied for interstate national banks, since the OCC had approved interstate main office relocation transactions that

Moreover, at its branches in Missouri, Illinois, and Oklahoma, as well as those in North Carolina, South Carolina, Georgia, Florida, Virginia, Maryland, and the District of Columbia NationsBank is authorized to engage in all activities permissible for national banks, including fiduciary activities. See, e.g., 12 U.S.C. §§ 215a-1 (Riegle-Neal mergers with a resulting national bank occur under the National Bank Consolidation and Merger Act), 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks), & 1831u(d)(1) (continued operations at retained interstate branches). See also OCC Interpretive Letter No. 695 (December 8, 1995) (national banks may engage in fiduciary business at trust offices and branches in different states). Cf. 12 U.S.C. § 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

B. The Subsequent In-State Mergers in Missouri are Authorized, and the Resulting Bank may Retain the Offices of the Banks, under 12 U.S.C. §§ 215a & 36(b)(2).

After the Vandalia Merger is consummated, NationsBank will have branches in Missouri (i.e., the offices of Boatmen's Bank of Vandalia). Subsequently, in the Other Missouri Mergers and the Southern Missouri Merger, sixteen other affiliated banks whose main offices are in Missouri will be merged into NationsBank. These later mergers are authorized under 12 U.S.C. § 215a, and the resulting bank may retain the offices of the banks under 12 U.S.C. § 36(b)(2). These transactions are mergers between an interstate national bank and other banks in one of the states in which the interstate bank already has branches. The OCC previously has considered such applications under sections 215a and 36(b). As discussed in section B-3 below, the Riegle-Neal Act did not change existing authority under sections 215a and 36(b). These mergers do not raise new issues, but only the application of established precedent for applying sections 215a and 36(b) to interstate national banks.

also involved mergers with affiliate banks in which the resulting bank's authority to retain branches was based on section 36(b)(2). The Conference Report to the Riegle-Neal Act makes reference to such OCC decisions. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (1994). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions apply to branch retention in interstate merger transactions under section 1831u, rather than the complex branch retention provisions of section 36(b)(2). Of course, section 36(b)(2) continues to govern branch retention in national bank mergers that are not entered into under section 1831u, including mergers involving an interstate bank (such as a merger of an interstate bank into another national bank in its home state).

1. The mergers are authorized under section 215a.

Mergers of national banks, and of state banks into national banks, are authorized under 12 U.S.C. § 215a. Section 215a provides in relevant part:

One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this subchapter, may merge into a national banking association located within the same State, under the charter of the receiving association.

12 U.S.C. § 215a(a) (emphasis added). In many prior decisions, both before and after the Riegle-Neal Act, the OCC has interpreted and applied this section with respect to mergers with an existing interstate national bank.¹¹ We concluded that, just as for branching purposes under section 36, a national bank with its main office and branch offices in more than one state was "located" in each such state, for the purpose of mergers with other banks in that state under 12 U.S.C. § 215a (mergers) or 12 U.S.C. § 215 (consolidations). This reading is consistent with the plain meaning of the statute and its legislative history. It is also supported by judicial construction of "situated" in section 36(c) and similar locational phrases in other sections of the National Bank Act. Any other reading could render section 215a largely unworkable in the case of interstate banks. Finally, the Riegle-Neal Act itself suggests that subsequent mergers in a state by a Riegle-Neal interstate bank may occur under relevant law for in-state mergers. See 12 U.S.C. § 1831u(d)(2) (quoted in note 12 below). The reasoning and support for this position are extensively set out in the earlier OCC decisions, such as those in note 11.

Accordingly, in the Other Missouri Mergers and the Southern Missouri Merger, NationsBank is located in Missouri by virtue of its branches there, and so it may merge with the other sixteen banks whose main offices are in Missouri under section 215a.

2. The resulting bank may retain the offices of all the banks under section 36(b)(2).

The NationsBank has also requested OCC approval for the bank resulting from the Other Missouri Mergers and the Southern Missouri Merger (referred to in this section as "NationsBank-

¹¹ See, e.g., Decision on the Application to Merge Fleet Bank of New York, N.A. with NatWest Bank N.A. (OCC Corporate Decision No. 96-20, April 12, 1996) ("OCC Fleet/NatWest Decision"); Decision on the Application to Merge Bank and Trust Company of Old York Road into Midlantic Bank, N.A. (OCC Corporate Decision No. 95-18, May 25, 1995) ("OCC Midlantic/Old York Decision"); Decision on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995), reprinted in Fed. Banking L. Rep. (CCH) ¶ 90,474 ("OCC Bank Midwest Decision"); Decision on the Applications of First Fidelity Bank, N.A. (Pennsylvania) and First Fidelity Bank, N.A. (New Jersey) (OCC Corporate Decision No. 94-04, January 10, 1994), reprinted in [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 89,644. Decision on the Application of State Savings Bank, Southington, Connecticut, to Convert into a National Banking Association and Merge into Connecticut National Bank, Hartford, Connecticut (OCC Merger Decision No. 91-07, April 8, 1991) ("OCC Shawmut Decision") (at the time of conversion, State Savings Bank had branches in Rhode Island); Decision on the Application to Merge Girard Bank, Bala Cynwyd, Pennsylvania, into Heritage Bank, N.A., Jamesburg, New Jersey (March 27, 1984), reprinted in [1983-84 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 99,925.

Resulting" or "the Resulting Bank" to distinguish it from NationsBank or the target banks prior to the mergers) to retain the main offices and branches of the target banks and the branches of NationsBank as branches of the Resulting Bank after the mergers. Branch retention following these mergers is covered by the McFadden Act. See 12 U.S.C. § 36(b)(2). Applying the various provisions of section 36(b)(2) to the different groups of branches involved in these mergers, we find that NationsBank-Resulting is legally authorized to retain all the offices as branches.

a. Retention of the main offices and branches of the 16 other Missouri banks in the Other Missouri Mergers and the Southern Missouri Merger.

In the proposed mergers, the sixteen Missouri banks are the target banks, since the mergers are effected under the charter of NationsBank. NationsBank-Resulting is authorized to retain the main offices and branches of each of the sixteen banks under section 36(b)(2)(A). Under section 36(b)(2)(A), the resulting bank may retain the branches or the main office of the target bank if the resulting bank could establish them as new branches of the resulting bank under section 36(c). For branching purposes under section 36(c), a national bank is "situated" in any state in which it has a branch or main office and may establish branches in each such state in the same manner as in-state national banks. See Seattle Trust & Savings Bank v. Bank of California, N.A., 492 F.2d 48, 51 (9th Cir. 1974), cert. denied, 419 U.S. 844 (1974).¹² In applying the

¹² Indeed, provisions in the Riegle-Neal Act have, in effect, codified the Seattle Trust interpretation of section 36 for Riegle-Neal interstate national banks, as NationsBank will be with respect to Missouri. Section 1831u(d)(2) provides:

(2) Additional Branches. -- Following the consummation of any interstate merger transaction, the resulting bank may establish, acquire, or operate additional branches at any location where any bank involved in the transaction could have established, acquired, or operated a branch under applicable Federal or State law if such bank had not been a party to the merger transaction.

12 U.S.C. § 1831u(d)(2). See also 12 U.S.C. § 36(g)(2)(B) (applying section 1831u(d)(2) to subsequent branches when a national bank has entered a state initially with a *de novo* branch under the Riegle-Neal Act). Under this provision, for any host state, a national bank resulting from a Riegle-Neal interstate merger transaction among national banks in different states may establish or acquire additional branches in the host state under the federal law applicable to branching in the host state by the predecessor national bank in the host state (e.g., section 36(b)(2) with respect to branches acquired through merger, and section 36(c) with respect to branches acquired by purchase or established *de novo*). The legislative history confirms the statutory language. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 50, 56 (August 2, 1994). See also Decision on the Applications of Community National Bank (OCC Corporate Decision No. 96-22, April 19, 1996) (further discussion of these provisions).

In its application for the Oklahoma Merger, NationsBank stated its belief that, after that merger, under section 1831u(d)(2) NationsBank would be authorized to establish, acquire, or operate additional branches in Oklahoma at the same locations where Boatmen's National Bank of Oklahoma could have established, acquired, or operated a branch. However, in a comment letter, the Oklahoma Bank Commissioner advised the OCC that Oklahoma's branching laws do not permit a branch of a bank to establish branches, and in particular, that "[n]o branch bank of an out-of-state bank shall be permitted to establish separate branch banks or limited service facilities, or to engage in any activity not permissible for a bank in this state," Okla. Stat. Ann. tit. 6, § 501.1(L). See Letter from Mick Thompson, Bank Commissioner (June 5, 1997). Thus, while Boatmen's National Bank of Oklahoma is authorized to establish certain *de novo* branches in Oklahoma under applicable federal or state branching law, NationsBank would not be permitted to do so, after the merger, under Oklahoma law, according to the Commissioner.

branch retention provisions of section 36(b)(2)(A) in the context of mergers involving interstate banks, it is therefore necessary to determine in which state(s) the resulting bank is situated. The OCC previously concluded that the resulting bank is properly treated as situated in all of the states in which the participating banks were situated in order to then apply the section 36(c) standard, using each state's law for the branches in that state.¹³ We first reached this analysis in a decision involving the conversion of an interstate state bank and its subsequent merger into a national bank, see OCC Shawmut Decision, and have applied it in subsequent decisions involving mergers with interstate banks both before and after the Riegle-Neal Act. See, e.g., OCC Bank Midwest Decision (Part II-C-2-a); other OCC decisions cited in note 11 above.

Accordingly, in the Other Missouri Mergers and the Southern Missouri Mergers, the resulting bank, NationsBank-Resulting, is situated in all the states in which the participating banks were situated, both in the states of the target banks and in the states of the lead bank (NationsBank), for purposes of sections 36(b)(2)(A) & 36(c). In these mergers, with respect to the target banks, the states' laws allow state banks in the state to establish or acquire branches without limitation within the state, and so a national bank situated in that state could establish branches at the locations of the target banks under section 36(c). See Mo. Rev. Stat. § 362.107 (for the Missouri branches of all sixteen target banks); Kan. Stat. Ann. § 9-1111 (for the Kansas branches of NationsBank, N.A. (Mid-West)); 205 Ill. Comp. Stat. Ann. § 5/5(15) (for the Illinois branches of The Boatmen's National Bank of St. Louis). Therefore, NationsBank-Resulting may retain and operate the main offices and branches of the target banks under section 36(b)(2)(A).

b. Retention of NationsBank's branches in the Other Missouri Mergers and the Southern Missouri Merger.

In these mergers, NationsBank is the acquiring or lead bank, i.e., the bank under whose charter the merger is effected. Section 36(b)(2)(C) of the McFadden Act authorizes the national bank resulting from a merger to retain and operate as a branch any branch of the lead bank that existed prior to the merger, unless a state bank resulting from a merger would be "prohibited" by state law from retaining as a branch an identically situated office of a State bank. Section 36(b)(2) differentiates between branches of target banks and branches of the lead bank. State law on the establishment of new branches applies to the resulting bank's retention of the

Since the merger itself does not involve any such additional branches, the Commissioner did not object to it, but the Commissioner was concerned that approval of the merger application could be viewed as tacit approval of additional branches in the future. The OCC believes the better view of the law is that Congress intended section 1831u(d)(2), including its incorporation of the appropriate applicable federal or state branching law, to provide authority for additional branches by interstate banks after an interstate merger transaction under the Riegle-Neal Act. However, in the present Oklahoma Merger, we need not finally address this question in relation to the Oklahoma statute cited by the Commissioner. A full legal analysis of the issue can be conducted, if needed, if and when NationsBank, or another interstate national bank operating in Oklahoma, proposes to apply for an additional branch in Oklahoma.

¹³ For purposes of section 36(b) and section 36(c) of the McFadden Act, the state law that is incorporated is state law dealing with branching by that state's banks within the state. State laws pertaining to the activities of the state's banks outside the state or to the activities of out-of-state banks within the state are not within the scope of what these sections of the McFadden Act refer to. See, e.g., OCC Bank Midwest Decision (Parts II-B, II-C-2, II-D, III-B-1-b).

branches of the target bank under paragraph (A); but it does not apply to the resulting bank's retention of the branches of the lead bank under paragraph (C). Instead, a different rule applies: The branches may be retained unless the state has expressly prohibited it.

In prior merger decisions involving interstate national banks, the OCC has addressed the interpretation of section 36(b)(2)(C) with respect to lead banks that have offices in more than one state. We determined that section 36(b)(2)(C) should be applied in the same manner as sections 36(c) and 36(b)(2)(A), so that the resulting national bank is treated as situated in each state in which it operates in applying section 36(b)(2)(C). Thus, the power of the resulting bank to retain the lead bank's branches in each state is determined by reference to that state's laws for that state's banks for mergers in the state. We reached this conclusion in decisions both before and after the Riegle-Neal Act. See, e.g., OCC Bank Midwest Decision (Part II-C-2-b); other OCC decisions cited in note 11.

Thus, under section 36(b)(2)(C), for each state, the resulting bank may retain the branches of the lead bank unless the state has expressly prohibited branch retention for identically situated offices in a merger between its state banks. With respect to NationsBank's branches in North Carolina, South Carolina, Georgia, Florida, Virginia, Maryland, and the District of Columbia, there are no provisions in the laws of these jurisdictions that would prohibit a state-chartered bank, following a merger with another state bank in that state, from retaining its own similarly situated branches in the state if such offices were branches of the state-chartered bank. Therefore, NationsBank-Resulting may retain the branches of NationsBank under section 36(b)(2)(C).

3. This existing authority for national banks under 12 U.S.C. § 215a & 36(b) continues after the Riegle-Neal Act.

Our analysis of the legal authority for the Other Missouri Mergers and the Southern Missouri Merger is based on pre-existing law for national banks, in particular 12 U.S.C. §§ 36(b), 36(c), & 215a. The Riegle-Neal Act did not alter these provisions, did not change the legal analysis and result under them, and indeed confirmed it. The statutory language and legislative history in the Riegle-Neal Act clearly contemplate that existing authority under these provisions remains in effect. The language of these sections is not changed, and the legislative history contains no indication of any intent to modify the operation of these sections. Moreover, nothing in the new sections added in the Riegle-Neal Act (in particular the provision on exclusive authority for additional branches, 12 U.S.C. § 36(e), discussed below) conflicts with any authority in these sections.

The statutory changes and legislative history of the Riegle-Neal Act shows that Congress was completely aware of the OCC's prior interstate decisions. OCC decisions prior to the Riegle-Neal Act addressed interstate mergers and involved issues and analysis of sections 36 and 215a. In the Riegle-Neal Act, Congress did not change sections 36(b), 36(c), or 215a or express any disagreement with OCC's interpretation and application of them. Nor does the new section 44 authority for interstate merger transactions in the Riegle-Neal Act and the corresponding new provision authorizing national banks to engage in section 44 mergers, 12 U.S.C. § 215a-1 supplant existing merger authority possessed by national banks. Review of the statutory

framework and legislative history shows that the intended operation of section 44 and section 215a-1 is that they are a separate and parallel source of authority for interstate merger transactions. They will allow interstate mergers after June 1, 1997, overriding any conflicting state laws. Section 44 permits states to opt-out or to opt in early. But it does not supplant existing federal laws for national banks that allow some forms of interstate transaction *with a bank that is already interstate*. Indeed, the Riegle-Neal Act itself suggests that subsequent mergers in a state by a Riegle-Neal interstate national bank are to occur under section 215a. See 12 U.S.C. § 1831u(d)(2) (quoted in note 12 above).

We therefore find no basis to conclude that the Riegle-Neal Act supersedes existing law for national banks in ways other than those explicitly set out in section 36(e), which is not relevant here.¹⁴ Thus, a transaction that can come under other existing authority continues to be authorized under that authority, provided it is consistent with the provision on exclusive authority for additional branches in section 36(e). Such is the case here. In the Other Missouri Mergers and the Southern Missouri Merger, section 36(e)(1) is complied with because NationsBank already has branches in Missouri and/or the target banks' branches are retained and operated under the authority of section 36(b), a part of "this section" referred to in section 36(e)(1). Accordingly, these mergers can occur under section 215a.

C. Conclusion

In conclusion, the legal analysis of these merger applications is similar to the analysis in prior OCC decisions. The Vandalia Merger, the Illinois Mergers, and the Oklahoma Merger are authorized as interstate merger transactions under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u, and the resulting bank may retain and operate the branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1). The Other Missouri Mergers and the Southern Missouri Merger are authorized under 12 U.S.C. § 215a, and the resulting bank may retain and operate the branches under 12 U.S.C. § 36(b)(2). Accordingly, these merger applications are legally authorized.¹⁵

¹⁴ That provision provides in relevant part:

Effective June 1, 1997, a national bank may not acquire, establish, or operate a branch in any State other than the bank's home State (as defined in subsection (g)(3)(B)) or a State in which the bank already has a branch unless the acquisition, establishment, or operation of such branch in such State by such national bank is authorized under this section or section 13(f), 13(k), or 44 of the Federal Deposit Insurance Act.

12 U.S.C. § 36(e)(1) (emphasis added). This aspect of the relationship of the Riegle-Neal Act and existing law is discussed further in the OCC Midlantic/Old York Decision (Part II-C) and the OCC Fleet/NatWest Decision (Part II-C).

¹⁵ NationsBank, N.A. (Mid-West), The Boatmen's National Bank of St. Louis, and Boatmen's National Bank of Oklahoma have a number of subsidiaries, as listed in the applications. All these subsidiaries are permissible for national banks. Boatmen's Bank of Southern Missouri also has one subsidiary, but it is currently inactive. By operation of the mergers, these subsidiaries will become subsidiaries of NationsBank. In addition, each of NationsBank, N.A. (Mid-West) and the other Boatmen's banks owns a minority interest in BBI Merchant Processing Company, which was established in 1996 pursuant to the Bank Service Corporation Act. BBI Merchant Processing

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act.

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger which would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find these merger applications may be approved under section 1828(c).

1. Competitive Analysis

Since all the banks are already owned by the same bank holding company, the mergers will have no anticompetitive effects.

2. Financial and managerial resources

The financial and managerial resources of all the banks are presently satisfactory. NationsBank expects to achieve efficiencies by operating the offices of the target banks as branches rather than a separate corporate entities. The geographic diversification of its operations will also strengthen the combined bank. The future prospects of the existing institutions, individually and combined, are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the merger applications.

3. Convenience and needs

The resulting bank will help to meet the convenience and needs of the communities to be served. NationsBank will continue to serve the same areas in North Carolina and its other states, and it will add the target banks' offices in the new states. The proposed mergers will result in an expansion and enhancement of banking services in the markets served by the target banks because of the broader array of products and services offered by NationsBank and the geographic scope of NationsBank's branch and automated teller networks. There will be no reductions in products or services as a result of the mergers. The combined bank will continue to offer a full line of banking products and services. The mergers will permit the resulting bank to better serve its customers and at a lower cost. The combined resources, including capital and reserves, of the currently separate banks will provide a more substantial capital cushion for unexpected losses as well as provide business customers with a higher legal lending limit.

Company is 100% owned by these banks and certain other affiliated banks not involved in the present mergers. As a result of the mergers, NationsBank will succeed to the ownership interests of the merging banks, and will own more than 50% of BBI Merchant Processing Company. BBI Merchant Processing Company is engaged in activities permissible for national banks (namely, merchant transaction card processing services), and NationsBank's ownership interest is authorized.

Upon completion of the mergers, customers of all the banks will have available to them a significantly greater number of branches at which to bank. Currently, banking is not as convenient as it could be for customers who frequently travel across the state lines or for business customers who have operations in more than one state. Following the merger, customers would be dealing with the same bank in the different states and will be able to readily access their accounts with greater convenience. NationsBank has identified approximately twenty-five branches that will be consolidated with other branches or will be closed after the mergers. Some of these branches were listed in the applications and the published notices for the mergers, and the required notices were sent to branch customers. Others were identified later; and the required notices are being provided. In some cases, the decision to close a branch previously identified for closure is being reconsidered. The objective in identifying branches for closing was to eliminate overlapping locations without vacating any market currently served by the banks. As part of its ongoing business plans, NationsBank and NationsBank Corporation continually evaluate its branch system, including branches acquired in transactions and, as a part of the normal course of business, may close redundant or unprofitable branches. The closures already identified, and any other such later closures will be made in accordance with applicable statutes and regulations, including notification of customers of the branches, and will consider the needs of the community affected.

Accordingly, we believe the impact of the mergers on the convenience and needs of the communities to be served is consistent with approval of the merger applications.

B. The Community Reinvestment Act

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications. See 12 U.S.C. § 2903. NationsBank has an outstanding rating with respect to CRA performance. All of the target banks have ratings of outstanding or satisfactory with respect to CRA performance. No comments were received by the OCC relating to any of these applications, and the OCC has no other basis to question the banks' performance in complying with the CRA.

The mergers are not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same communities that the merging banks currently serve. NationsBank will continue its current CRA programs and policies in North Carolina and its other states. After the mergers occur, the target banks' offices in the new states will remain open as branches of NationsBank. NationsBank will carry forward the same CRA programs and policies and assessment areas that the banks have today, and over time will adapt them to the programs of NationsBank. Moreover, NationsBank has represented that it will honor all CRA-related commitments made by the target banks. As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all the communities it serves as NationsBank and the target banks have today as separate banks. The merger and operation of interstate branches do not alter the resulting bank's obligation to help meet the credit needs of its communities in all the states it serves. We find that approval of the proposed mergers is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that the Vandalia Merger, the Illinois Mergers, and the Oklahoma Merger are authorized as interstate merger transactions under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a), and the resulting bank is authorized to retain and operate the offices of the banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1), that the Other Missouri Mergers and the Southern Missouri Merger are authorized under 12 U.S.C. § 215a, and the resulting bank may retain and operate the offices of the banks under 12 U.S.C. § 36(b)(2), and that these mergers meet the other statutory criteria for approval. Accordingly, these merger applications are hereby approved.

 /s/
Julie L. Williams
Chief Counsel

 06-06-97
Date

Application Control Numbers:

- 97-ML-02-0008 (the Vandalia Merger)
- 97-ML-02-0009 (the Illinois Mergers and the Other Missouri Mergers)
- 97-ML-02-0013 (the Oklahoma Merger and the Southern Missouri Merger)